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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE :
COMMISSION, :
Plaintiff, :

vs. : 08 Civ. 4612-CM
: (ECF Case)

JOHN MICHAEL KELLY, STEVEN E. :
RINDNER, JOSEPH A. RIPP, and :
MARK WOVSANIKER, :
:
Defendants. :

- - - - - x

Washington, D.C.
Wednesday, December 23, 2009

VIDEOTAPED DEPOSITION OF
GARRET G. RASMUSSEN

<p style="text-align: right;">14</p> <p>1 Q. And did there come a time in the late 2 1990s when you represented a company called 3 MovieFone? 4 A. Yes. 5 Q. Can you just tell me briefly a little bit 6 about MovieFone? 7 A. MovieFone was a company that provided 8 reserved seats at movie theaters so that people 9 could call in advance, make sure that they could 10 have a seat at the movie before they actually went 11 out of their house or apartment and went to the 12 movie theater. 13 Q. And can you tell me when you began 14 representing MovieFone? 15 A. It was in the late -- mid -- mid to late 16 1990s. It was the time that Pearl Jam had 17 complained about Ticketmaster's conduct to the 18 antitrust division. 19 Q. Okay, and if you could tell me how 20 Ticketmaster ties into MovieFone's business, if at 21 all? 22 A. Yeah, MovieFone entered into a joint</p>	<p style="text-align: right;">16</p> <p>1 an objection here on behalf of AOL and Time Warner. 2 You're obviously welcome to answer the question with 3 any public information you have. I'd like you to 4 not answer to the extent your answer would reflect 5 attorney-client communications or your own attorney 6 work product on behalf of AOL -- 7 THE WITNESS: Yeah. 8 MR. BENNETT: -- or Time Warner. 9 THE WITNESS: And I'll try to pay 10 attention to that, Edward. Please object if -- 11 because I may not be paying as close attention as I 12 should. 13 MR. BENNETT: You've been doing a very 14 good job. 15 THE WITNESS: Okay, okay, okay. 16 MR. BENNETT: I just wanted to -- 17 THE WITNESS: Thanks. 18 BY MR. BOWERS: 19 Q. Okay. So actually, let's take a different 20 step back and talk about Pacer CATS for a moment. 21 If I got it correct -- if I got your -- if I 22 understood your testimony correctly, what you said</p>
<p style="text-align: right;">15</p> <p>1 venture with a company called Pacer CATS. Pacer 2 CATS had been owned by Wembley. At the time the 3 joint venture was entered into, Wembley was the 4 parent of Pacer CATS. Ticketmaster also, as you 5 know, sells tickets and is interested in all sorts 6 of ticket sales, so MovieFone considered 7 Ticketmaster to be a rival. Ticketmaster acquired 8 Pacer CATS from Wembley after the joint venture was 9 formed and proceeded to poison the joint venture by 10 disrupting the performance of Pacer CATS. 11 Q. Okay, and let's take a step back because I 12 didn't actually get the sort of foundational stuff 13 about MovieFone. Tell me who you worked with at 14 MovieFone. 15 A. Henry Jarecki, who was the chairman and 16 father of Andrew Jarecki. Andrew Jarecki was the 17 president and CEO, and Adam Slutsky was the CFO, and 18 it was those three people that I interacted with. 19 Q. And did there come a time when MovieFone 20 entered into some sort of business arrangement with 21 AOL? 22 MR. BENNETT: I'm just going to interject</p>	<p style="text-align: right;">17</p> <p>1 earlier is that MovieFone entered into a joint 2 venture with Wembley. 3 A. No, with Pacer CATS. 4 Q. I'm sorry, that's why I want to make sure 5 -- 6 A. Yes. 7 Q. -- I had it right. 8 A. With Pacer CATS. Pacer CATS was owned by 9 Wembley. 10 Q. Okay. 11 A. So Wembley sold its interests subsequently 12 to Ticketmaster, so we found our joint venture 13 partner to be owned by our biggest rival. We could 14 have lived with that but for the conduct of 15 Ticketmaster after that. 16 Q. Okay, and let's -- again, let's step back 17 a little bit before Ticketmaster comes into the 18 picture and acquires the joint venture from Wembley. 19 A. Right. No, not acquired the joint 20 venture. 21 Q. Pacer CATS from Wembley. 22 A. Right.</p>

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AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: A2A Case No. 13-181-00952-94
MOVIEFONE, INC., PROMOFONE INC.,
AND THE TELETICKETING CO. L.P.,
VS
PACER CATS CORPORATION

AWARD OF THE ARBITRATORS

We, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into by the above-named parties and dated February 14, 1992, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

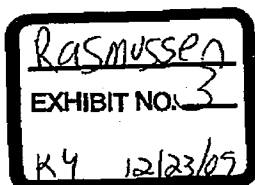
I.

Declaratory Relief

1. It is declared that:

- (a) On February 14, 1992 Pacer CATS Corporation ("Pacer CATS") and Promofone Inc. (later known as MovieFone, Inc. and referred to herein as "MovieFone") entered into an agreement (the "Agreement") pursuant to which, among other things, an entity known as "TTC" was created.
- (b) The Agreement contained an arbitration clause requiring disputes arising between the parties to be submitted to arbitration by a panel of three arbitrators under the

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CONFIDENTIAL TREATMENT
REQUESTED



laws of the State of New York in accordance with the rules of the American Arbitration Association.

(c) That clause has been properly invoked in connection with the disputes which are the subject of this Award and arbitral jurisdiction exists to make the determinations and Award herein.

2. It is declared that the Agreement did not establish a partnership or joint venture between Pacer CATS and MovieFone.

3. It is declared that:

(a) At the time the Agreement was entered into, Pacer CATS was a subsidiary of Wembley, plc ("Wembley").

(b) Wembley unconditionally guaranteed the full and timely performance by Pacer CATS of its obligations of payment and performance under the Agreement.

4. It is declared that:

(a) The Agreement provided that the activities contemplated by its terms would be carried out in two stages as defined in the Agreement.

(b) The First Stage was never concluded and its requirements were never waived by TTC.

- (c) The Threshold Return was never realized by TTC, and the Second Stage Deadline never expired.

5. It is declared that:

- (a) The Agreement by its terms was binding on Pacer CATS and its successors and assigns.
- (b) Pacer/CATS/CCS, which is a joint venture created by agreement dated March 4, 1994 between Ticketmaster Corporation and Wembley plc, is a "successor" to Pacer CATS as that term is used in the Agreement.

6. It is declared that:

- (a) Respondent materially breached the Agreement in the manner and to the extent set forth in the Statement of Reasons upon which this Award is based, commencing in approximately December 1993 and continuing thereafter.
- (b) Respondent is liable for damages to Claimant MovieFone for such breach in the amounts set forth below and detailed in the accompanying Statement of Reasons.

7. It is declared that Respondent is not liable to Claimant for punitive damages.

II.

Monetary Awards

1. As more fully set forth in the Statement of Reasons, Respondent is liable to Claimant MovieFone for general damages on account of Respondent's breach of the Agreement, in the aggregate amount of \$7,567,250.
2. As more fully detailed in the Statement of Reasons, Respondent is liable to Claimant MovieFone for damages incurred by MovieFone in covering the failed performance of Respondent and as compensation for reasonably ascertainable loss of profits in the aggregate amount of \$15,184,000.
3. Therefore, within thirty (30) days of the date of this Award, Respondent shall pay to Claimant MovieFone as damages herein the total sum of \$22,751,250.
4. The damages awarded herein shall not bear any pre-award interest but shall bear interest on any unpaid amounts thereof at the legal rate for judgments from time to time obtaining under New York law, commencing thirty days from the date of this Award.
5. Each party shall bear the costs of its own attorneys' fees and the costs and disbursements of its experts and claims for the recovery of such amounts are in all respects denied.

III.

Injunctive Award

1. Pacer CATS and its successors and assigns and all persons or entities acting in concert with them or any of them to whom actual notice of this Award may come are hereby enjoined during the period commencing on the date of this Award and ending at 12:00 o'clock midnight (E.S.T.) on December 31, 1999, from:
 - (a) disabling or otherwise rendering inoperable the Teleservices equipment or Network Equipment or otherwise interfering with or causing another to interfere with the provision of Teleservices at TTC teleticketing theaters, including pass-through theaters; and
 - (b) entering into agreements to provide or providing Teleservices or Network Services to theaters in Markets and Additional Markets other than those theaters to which Teleservices were provided by Pacer CATS or TTC as of April 14, 1994.
2. All other claims for equitable relief asserted by Claimants are denied.

IV.

Counterclaims

All counterclaims asserted by Respondent are denied and dismissed.

v.

Other Matters

1. All capitalized terms used herein that are defined in the Agreement shall have the meanings attributed to them in the Agreement.
2. This Award is accompanied by a Statement of Reasons upon which it is based pursuant to paragraph 6 of the Supplementary Procedures for Large, Complex Disputes and such Statement of Reasons constitutes the findings of fact and conclusions of law of the Arbitrators. Such findings and conclusions are incorporated by reference herein and made a part of this Award as if they were set forth at length herein.
3. All pending motions for relief of any kind, including, without limitation, motions seeking the exclusion or striking of evidence or the drawing of specified inferences, are denied.
4. All claims of the parties, not otherwise specifically addressed herein, are denied. All contentions of the respective parties which are not specifically ruled upon in this Award and the Statement of Reasons have been considered by the Arbitrators and are rejected.
5. This Award is in full settlement of all claims and counterclaims submitted by the parties for arbitration.

6. The compensation of the Neutral Arbitrator totaling TWO HUNDRED TWENTY NINE THOUSAND TWO HUNDRED TWENTY FIVE DOLLARS (\$229,225.00), shall be borne equally by the parties.
7. The administrative fees and expenses of the American Arbitration Association totaling THIRTY FIVE THOUSAND THIRTEEN DOLLARS AND SEVENTEEN CENTS (\$35,013.17), shall be borne equally by the Parties. Therefore, Pacer CATS shall pay to MovieFone the sum of FIVE HUNDRED DOLLARS (\$500.00), representing that portion of said fees and expenses previously advanced by Pacer CATS to the Association over and above their one-half share.

Louis A. Craco 7/23/97
Louis A. Craco, Esq./DATED

Bentley Kassal 7/23/97
Honorable Bentley Kassal/DATED

B. Lance Sauerteig 7/23/97
B. Lance Sauerteig, Esq./DATED

9AOL050054
CONFIDENTIAL TREATMENT
REQUESTED

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Louis A. Craco, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

7/23/97
(DATED)

Louis A. Craco
(SIGNATURE)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Honorable Bentley Kassal, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

7/23/97
(DATED)

Bentley Kassal
(SIGNATURE)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, B. Lance Sauerteig, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

7/23/97
(DATED)

B. Lance Sauerteig
(SIGNATURE)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE :

COMMISSION, :

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JOHN MICHAEL KELLY, STEVEN E. :

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MARK WOVSANIKER, :

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Defendants. :

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Washington, D.C.

Wednesday, December 23, 2009

VIDEOTAPED DEPOSITION OF

GARRET G. RASMUSSEN

<p style="text-align: right;">22</p> <p>1 things for the record, I'd just note for the record 2 I sent a letter last night to counsel for the SEC, 3 counsel for the witness and counsel for AOL 4 outlining Mr. Kelly's reservation of the rights. 5 Should there be a waiver of the privilege today, 6 Mr. Kelly reserves the right to call Mr. Rasmussen 7 in order to go over with him any privileged 8 materials that might be produced subsequent to such 9 waiver. 10 MR. DRIMMER: And we will note for the 11 record that we're joining in the reservation of 12 Mr. Kelly for Mr. Rindner. 13 MR. DUNCAN: And just so everyone knows, 14 our position is Mr. Rasmussen's available today for 15 seven hours of deposition and we'll await further 16 court order for any further testimony. 17 MR. BENNETT: Just so we have a completely 18 level playing field, and I hope this will be the 19 last time I'll have to talk at length on the record, 20 just so everybody understands the ground rules so if 21 there's any -- there are any questions later in the 22 day from the defendants for Mr. Rasmussen, AOL for</p>	<p style="text-align: right;">24</p> <p>1 MS. LYNCH: And counsel for Mr. Rupp joins 2 in the reservation of rights as well. 3 BY MR. BOWERS: 4 Q. Is that everybody? Great. Okay, 5 Mr. Rasmussen, I apologize for the delay and let's 6 continue. Can you tell me, with respect to Exhibit 7 1, which my understanding is Wembley's guarantee of 8 Pacer CATS's obligations in the joint venture that 9 you described between MovieFone and Pacer CATS, did 10 there come a time when you communicated your 11 understanding of this document to Wembley? 12 A. Wembley's counsel, yes. 13 Q. Tell me about that if you would please. 14 A. I told Wembley's counsel, a lawyer at 15 Dechert Price, that this guarantee obligated Wembley 16 to pay the full arbitration award that we had gotten 17 against Pacer CATS. 18 Q. Okay, and let's take a step back. We seem 19 to be going backwards and forwards. 20 A. That's all right. 21 Q. And I apologize for that. 22 A. Yeah.</p>
<p style="text-align: right;">23</p> <p>1 seven years has protected the attorney-client 2 privilege and the core work product of its attorneys 3 from disclosure, and we continue to keep to that 4 position. We're more than happy to have 5 Mr. Rasmussen testify regarding communications he 6 had with third parties, but we're not inclined to 7 allow him to testify about his thoughts and 8 impressions as an attorney regarding documents or 9 strategies that were played. We're also not 10 inclined to allow him to testify regarding any 11 communications he had with any persons internal to 12 his client, AOL or MovieFone or Time Warner. 13 MR. TOPETZES: I want to note on the 14 record on behalf of Mr. Wovsaniker that we join with 15 counsel for the other defendants in reserving our 16 client's rights with respect to these privilege 17 issues. I also want to note an administrative 18 matter with respect to today's deposition that, 19 John, I assume we have the same stipulation that 20 we've had in prior depositions that an objection for 21 one defendant is deemed to be an objection by all. 22 MR. BOWERS: Yes, we do.</p>	<p style="text-align: right;">25</p> <p>1 Q. But I'm somewhat trying to react to the 2 testimony that I get. It sounds like you ultimately 3 ended up representing MovieFone in an arbitration 4 proceeding -- 5 A. Yes. 6 Q. -- of some sort? Can you tell me about 7 that? 8 A. Well, we brought an arbitration action 9 against Pacer CATS pursuant to our contract with -- 10 the joint venture contract with Pacer CATS, and that 11 was arbitrated in New York City over 81 days or so, 12 and we won a unanimous judgment for about \$22 13 million, which was subsequently confirmed by the New 14 York Supreme Court. 15 Q. And tell me what your understanding as you 16 communicated it to third parties was of the impact 17 of that arbitration award on Wembley. 18 MR. TUTTLE: Objection to form and 19 foundation. 20 A. We -- after winning that award and after 21 having it confirmed, I approached Wembley's counsel 22 and said that we wanted -- we -- we interpreted this</p>

7 (Pages 22 to 25)